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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,362	02/20/2004	Shiping Wang	GL-6188	2424

7590 05/28/2008  
ALLEGIANCE CORPORATION  
Attn: Kim Luna, MPKB-1A  
1430 Waukegan Road  
McGaw Park, IL 60085-6787

EXAMINER
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AHMED, HASAN SYED

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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05/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,362	<b>Applicant(s)</b> WANG ET AL.	
	<b>Examiner</b> HASAN S. AHMED	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-34 and 43-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

- Receipt is acknowledged of applicants' RCE, filed on 14 April 2008.
- Applicants' arguments have been considered but are moot in view of the new grounds of rejection.

\* \* \* \* \*

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 March 2008 has been entered.

\* \* \* \* \*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-34 and 43-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,133,090 ("Modak") in view of U.S. Application No. 2002/0152538 ("McDevitt"), further in view of U.S. Patent No. 5,322,161 ("Shichman").

Modak teaches an antimicrobial elastomeric article (see col. 2, lines 26-29) comprising:

- the antimicrobial of instant claims 27 and 43 (see col. 2, line 26);
- the elastomeric material of instant claims 27 and 43 (see col. 2, line 30);
- the chlorhexidine salt of instant claims 27 and 45 (see col. 2, line 50);
- the quaternary ammonium halide of instant claims 27 and 45 (see col. 2, line 61);
- the glove of instant claims 28 and 44 (see col. 2, line 26);
- the chlorhexidine salt and quaternary ammonium halide of instant claims 29 and 45 (see col. 2, lines 50 and 61); and
- the chlorhexidine salt and benzalkonium chloride of instant claims 34 and 49 quaternary ammonium halide of instant claim 27 and 49 (see col. 2, lines 50 and 61).

Modak discloses a glove essentially free of starch and powder, as recited in instant claims 32 and 47.

The Modak reference differs from the instant application in that it does not teach a process of extending antimicrobial activity.

McDevitt teaches an elastomeric glove (see paragraph 0054). The disclosed glove is comprised of:

- the antimicrobial agent of instant claims 27 and 43 (see paragraph 0030);

- the packaging of instant claims 27 and 43 (see paragraph 0189); and
- the moisture-resistant barrier container (e.g. film foil laminate) of instant claims 33 and 48 (see paragraph 0189).

Neither Modak nor McDevitt teach a desiccant, however use of desiccants in metal foil packaging was known in the art at the time the instant application was filed as evinced by Shichman (see col. 2, lines 49-51).

The reduced humidity and extended antimicrobial activity of instant claims 27 and 43 are an inherent property of foil packaging containing desiccant.

McDevitt explains that packaging the gloves is beneficial, "...in order to preserve any additives applied to the finger glove or otherwise to maintain the finger glove in a sterile environment." See paragraph 0189.

The references are silent with respect to the time recited in instant claim 30 and the antimicrobial activity recited in instant claims 31 and 46. The prior art, as instantly claimed, discloses antimicrobial elastomeric articles packaged in foil containing desiccant (see above). Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose antimicrobial elastomeric articles packaged in foil containing desiccant, as taught by Modak in view of McDevitt, further in view of

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Shichman. One of ordinary skill in the art at the time the invention was made would have been motivated to use such a process because it leads to preservation of additives (such as antimicrobial agent), as explained by McDevitt.

\* \* \* \* \*

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 27-34 and 43-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 11/271,666 ('666). Although the conflicting claims are not identical, they are not patentably distinct from each other because '666 claims an elastomeric article comprising chlorhexidine and benzalkonium chloride (claim 13).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./  
Examiner, Art Unit 1618

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/Humera N. Sheikh/  
Primary Examiner, Art Unit 1618